

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000313-001 DT

01/28/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

KENNETH M FLINT

v.

ROBERT MICHAEL BLAIR (001)

TODD K COOLIDGE

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #1478753

Charge: 1) DUI-LIQUOR/DRUGS/VAPORS/COMBO
 1)IMPROPER LIGHT ON LICENSE PLACE
 2) FAIL TO PRODUCE EVIDENCE OF FIN RESP.
 2) DUI W/BAC OF .08 OR MORE
 3) IMPROPER POSITION; LEFT TURN
 4) DRIVE ONE LANE/UNSAFE LANE CHG
 5) SPEED/REASONABLE AND PRUDENT

DOB: 07/29/70

DOC: 12/14/00

This case has been under advisement since the time of oral argument on December 1, 2003. This decision is made within sixty (60) days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Scottsdale Municipal Court and the memoranda and oral arguments submitted by counsel.

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1. Jurisdiction and Standard of Review.

This Court has jurisdiction of the criminal appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A). This Court's review of the trial judge's ruling in this case denying Appellant's Motion to Suppress is made *de novo*.¹

2. Issue Presented on Appeal.

The only issue presented on appeal is whether the trial court abused its discretion in reconsidering a prior ruling suppressing blood-draw results. This Court concludes that the trial judge did not abuse his discretion, particularly in view of the recent Court of Appeals decision in *State ex rel. Pennartz v. Olcavage (Adair Real Party in Interest)*.²

3. Procedural History of the Case.

Appellant, Robert Michael Blair, was arrested and charged on December 14, 2000 with two DUI offenses and two civil traffic offenses. Appellant's blood was drawn by a phlebotomist employed by the Scottsdale Police Department. Appellant's trial counsel filed a Motion to Suppress the Results of the Blood Draw Evidence contending that the phlebotomist was not qualified to draw blood because she was not supervised by a doctor, a physician's assistant or a nurse practitioner as provided for in A.R.S. Section 32-1456. On August 27, 2001, the trial judge issued a written opinion granting Appellant's Motion to Suppress the Blood Draw Evidence, based upon his conclusion that the phlebotomist was not qualified to draw blood. Three days later, the Arizona Court of Appeals issued its published decision in *State ex rel. Pennartz v. Olcavage*³ in which it addressed the identical issue of qualifications required for phlebotomists that the trial judge had addressed. The Court of Appeals came to a contrary conclusion and determined that A.R.S. Section 32-1456 had no application to a forensic blood draw, such as that performed in this case. At the request of Appellee, the trial judge reversed its prior order suppressing the blood draw on October 30, 2002. Thereafter, the parties submitted this case to the trial court on the basis of stipulated evidence, including the police departmental reports. Appellant was found guilty of the charges, sentenced and has filed a timely Notice of Appeal in this case.

4. Discussion.

Appellant contends that the "law of the case doctrine" precludes a trial judge from reversing himself or herself once a ruling on a motion to suppress has been made. Appellant's contention is unsupported by the record and relevant case law. It clearly appears that the

¹ *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 927 P.2d 776 (1996); *State v. Johnson*, 184 Ariz. 521, 911 P.2d 527 (App. 1994).

² 200 Ariz. 582, 30 P.3d 649 (App. 2001).

³ *Id.*

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suppression of the blood draw in this case was not a final order by the Scottsdale Municipal Court, as the case had not yet proceeded to trial. More importantly, the “law of the case doctrine” refers to an appellate court’s decision that is final and binds a trial court for all subsequent proceedings within that same case.⁴

More importantly, in this case there appears to be extremely “good cause” for the trial judge to re-examine his ruling that granted Appellant’s Motion to Suppress, in the light of a recent Arizona Court of Appeals decision, that was clearly on point. Though the general rule is that a trial judge should not re-visit an issue previously determined in criminal proceedings⁵, reconsideration is appropriate when the lawfulness of a previous ruling becomes doubtful based upon a recent appellate opinion.⁶

5. Conclusion.

This Court concludes that the trial judge did not abuse his discretion in reversing his previous decision granting Appellant’s Motion to Suppress Blood Draw Evidence. The first ruling on the motion to suppress was not a final judgment and good cause clearly existed for the trial judge to reconsider his ruling in light of a recent Court of Appeals opinion. This Court finds no error.

IT IS THEREFORE ORDERED affirming the decisions, findings of guilt and sentences entered in this case by the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for all further and future proceedings in this case.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

⁴ Dunlap v. City of Phoenix, 169 Ariz. 63, 65-66, 817 P.2d 8, 10-11 (App. 1990).

⁵ See Rule 16.1, Arizona Rules of Criminal Procedure.

⁶ State v. Rodriguez, 160 Ariz. 381, 773 P.2d 486 (App. 1989).